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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 242 OF 2024
IN
SECOND APPEAL NO. 16 OF 2024**

Pushpa Tukaram Salekar ... Applicant

Vs.

Vaishali Ramdas Salekar ... Respondent

Mr. S.S. Panchpor a/w. Mr. A.S. Rabade for the Applicant.

Mr. Sumit Kothari for the Respondent.

CORAM : GAURI GODSE, J.

DATE : 21st JUNE 2024

ORDER :

1. The Second Appeal is admitted on the point of the findings recorded by the First Appellate Court including on the point of legality of the construction.

2. The impugned decree directs the appellant to remove the construction and cause repairs to the plaintiff's portion of the house. The impugned decree further directs the appellant not to carry out any transaction that may effect or initiate transfer of 10 guntha land or portion thereof which is part of the disputed construction. The operative part of the decree also records that said injunction on the appellant is until there is a formal and absolute partition of the suit

property. Learned counsel for the appellant therefore submits that the impugned decree be stayed during the pendency of the Second Appeal.

3. Learned counsel for the respondent submits that the admission of the Second Appeal and the grant of stay to the impugned decree may be construed as a decision on the legality of the construction. He therefore submits that it may be clarified that this court has not dealt with the legality of the disputed construction.

4. Since the Second Appeal is admitted, the impugned decree is required to be stayed. There was no prayer with regard to legality or illegality of the construction. Hence, question of law framed in the second appeal is with regard to the findings of the appellate court on the legality of the construction.

5. Hence, in the absence of any proceeding initiated, complaining about the legality of the construction, I do not see any reason to record any clarification. It is always open for the parties to adopt appropriate proceeding as permissible in law with regard to the legality of the construction.

6. In view of the admission of the second appeal on the points as framed, there will be stay of the execution and operation of the impugned judgment and decree during the pendency of the Second

Appeal.

7. Interim Application is allowed in aforesaid terms.

[GAURI GODSE, J.]

RAJESHWARI
RAMESH PILLAI

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